




Shelby County Attorney's Office

Memorandum

Via Email

To: Commissioner Steve Mulroy
Shelby County Board of Commissioners

From: Christy L. Kinard 
Assistant County Attorney

Date: September 22, 2009

Subject: Authority to Adopt Joint Ordinance Regulating Used Tire Disposal and
Permitting of Used Tire Businesses [A5074-09]

Pursuant to state law applicable to charter counties, the County Commission has discretionary authority to adopt ordinances "relating to purely county affairs, but such ordinances shall not be opposed to the general laws and shall not interfere with the local affairs of any municipality" within Shelby County. [Shelby County Charter, Art. II, § 2.06(A)(2); Tenn. Code Ann. § 5-1-211(a).] A county's ordinance making power is very limited and such ordinances only apply in the unincorporated areas of the county and are enacted for the purpose of governing the operation of government or regulating the conduct and affairs of the public. [Shelby County Charter, Art. II, § 2.01; Op. Tenn. Atty. Gen. No. 81-81 (Feb. 9, 1981); Op. Shelby Co. Atty. No. 87-0015 (May 4, 1987).]

The proposed ordinance regulates used tire disposal and the permitting of used tire businesses. The County does not have specific legislative authority to regulate used tire disposal and the permitting of used tire businesses. The County does, however, have the authority to enact ordinances for the purpose of protecting the public health, safety, and welfare of its citizens. State law regulates the disposal of new tires, therefore, the proposed County ordinance is not opposed to such general law. Because the proposed ordinance only applies in the unincorporated areas of the County, it does not interfere with the local affairs of the City of Memphis or any other incorporated municipality in Shelby County.

If it is the desire of the County to create a joint tire disposal fund and operate a joint redemption program with the City of Memphis, an interlocal agreement should be executed by both parties in accordance with the Interlocal Cooperation Act. [Tenn. Code Ann. §§ 12-9-101 to 108 (generally authorizing local governments to enter into agreements for the joint exercise of their powers or provision of services).] Something else to consider is which elected official will

be responsible for carrying out the governmental function established by the ordinance. The County Mayor is vested with the power to assign any function or duty to a major division of the Mayor's Administration and the duties, powers and functions of such divisions must be generally set by ordinance. [Shelby County Charter, Art. III, § 3.06(C)-(D). See Shelby County Code of Ordinances, Chapter 2, Administration (1992).] Departments under the Mayor's Administration may promulgate rules and regulations, subject to the mayor's approval, for purposes of carrying out their powers and assigned duties. [Shelby County Charter, Art. V, § 5.17.]

If the permitting function is to be carried out by the County Clerk's Office, for example, the assignment of such a duty should be designated by ordinance. Upon chartering, Shelby County was prohibited from diminishing the duties of the constitutional county officers. [Shelby County Charter, Art. VI, § 6.04; Tenn. Code Ann. § 5-1-210(12).] The Charter authorized the assignment of additional duties, however, and this should be accomplished by adoption of an ordinance. [Shelby County Charter, Art. VI, § 6.04.] By assigning this duty by ordinance, the Shelby County Clerk's Office will continue to be required to carry out this governmental function once that office is replaced by a county charter office. [Shelby County Charter, Art. VIII, § 8.09(B) (Sept. 1, 2010).]

Currently, the County is authorized to adopt ordinances governing zoning, the Port Commission, and other matters that are carried out jointly with the City of Memphis, because the authority to do so was originally derived from private acts and the language of those private acts was used to create ordinances by virtue of § 7.14 of the Shelby County Charter when the County became a charter form of government with ordinance making power. Other ordinances have resulted in joint operations because the function established by such ordinances is carried out by a joint department such as the Office of Construction Code Enforcement, a department of the Memphis and Shelby County Division of Planning and Development. If the County and City of Memphis desire to use a jointly operated department to carry out the governmental function created by the proposed tire ordinance, an interlocal agreement would not be necessary, but a budget amendment would be required to create the tire disposal fund.

If any additional information is needed relative to this matter, please let me know.

cc: All County Commissioners
Steve Summerall, Chief Administrator, County Commission
Brian L. Kuhn, County Attorney
Grace Hutchison, Deputy Director, Division of Administration & Finance
Tom Moss, Deputy Administrator, Land Bank Department